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Letter dated 3 March 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 10 April 2002 (S/2002/407).

The Counter-Terrorism Committee has received the attached third report from Liechtenstein, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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Annex

Note verbale dated 10 February 2003 from the Permanent Representative of Liechtenstein to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

The Permanent Representative of the Principality of Liechtenstein to the United Nations presents his compliments to the Chairman of the Counter-Terrorism Committee established pursuant to resolution 1373 (2001) and has the honour to transmit the third report on the implementation of resolution 1373 (2001) by Liechtenstein in response to the additional questions of the Committee (see enclosure).

Enclosure

Third Report of the Principality of Liechtenstein to the Counter-Terrorism Committee established pursuant to Security Council resolution 1373 (2001)

1. Introduction

Liechtenstein submits the following additional information to the Security Council Committee established pursuant to Resolution 1373 (2001) concerning Counter-Terrorism (CTC), pursuant to the letter of the CTC in this regard of 30 October 2002 (previous reports are contained in the documents S/2002/1253 of 27 December 2001 and S/2002/788 of 26 June 2002). Liechtenstein continues to give highest priority to the work of the CTC and follows the developments concerning the CTC with great attention. The Government of Liechtenstein hopes that the submission of this additional information will have fulfilled the requirements of "Stage A".

Before answering the questions below, the following general information should be mentioned: In April 2003, the Liechtenstein Parliament (Landtag) will discuss a package of legislation on combating terrorism. This package includes the ratification of the UN Convention for the Suppression of the Financing of Terrorism and will effect an improved implementation of Security Council resolution 1373. The planned legislative amendments can be found in the Annex and will be discussed below in connection with the relevant questions of the CTC.

2. Subparagraph 1.1.:

"The effective implementation of Paragraph 1 of the Resolution requires that professions that are involved in financial transactions (such as lawyers and accountants) be put under legal obligation to report suspicious transactions and subjected to penalties for non-compliance. Articles 9 and 9 (a) of the Due Diligence Act seem to impose such an obligation only in the context of first business contacts. How does Liechtenstein ensure that such reporting obligations apply also in the course of subsequent business activities?"

The Due Diligence Act (Sorgfaltspflichtgesetz, SPG) first requires financial intermediaries to engage in a complete verification of a business relationship upon initiation of the business relationship (article 4: Identification of the contracting party; article 5: Determination of the beneficial owner; article 10: Establishment of the client profile, etc.) and then to verify every single transaction in the ongoing business relationship (article 9 paragraph 1). This verification includes in particular the obligation to check individual transactions with the established client profile. In every case, the entire relationship with the client is subject to the required permanent verification by the financial intermediary. This ensures that any suspicious transactions arising in the course of the ongoing business relationship are reported to the FIU (article 9 paragraph 2). This notification duty continues for the entire duration of the business relationship. In particular, it is not permitted to terminate a client relationship solely for the purpose of avoiding the notification duty, even though in the particular case the preconditions for reporting a suspicion would actually have been met.

In addition, the financial intermediary has the right to submit a notification to the FIU even prior to initiation of the business relationship, upon mere business contact (article 9a SPG).

The due diligence requirements of the Due Diligence Act, and in particular the notification duty according to article 9, are therefore not limited to the initiation of the business relationship, but rather are applied at every stage of the business relationship.

3. **Subparagraph 1.3.:**

"Effective implementation of this paragraph also requires the existence of legal provisions or administrative measures to ensure that funds and other economic resources collected by non-profit organisations (e.g. religious, charitable or cultural organisation) are not diverted for other than the stated purposes, particularly for financing of terrorism. Please explain whether such provisions or measures are in place in Liechtenstein and, if not, how Liechtenstein proposes to monitor the use of funds etc. by non-profit organisations."

The Convention for the Suppression of the Financing of Terrorism of 9 December 1999 (signed by Liechtenstein on 2 October 2001) specifies that even attempted financing of terrorism within the meaning of the Convention shall be criminalized and that the punishability of financing of terrorism shall not be made dependent on the actual use of the financial means for perpetrating one of the named criminal acts. The new article 278d of the Criminal Code (Strafgesetzbuch, StGB), which constitutes part of the anti-terrorism package mentioned above, serves as a catch-all offense for this purpose. The provision and collection of assets for the purpose of perpetrating a criminal act listed in the individual subparagraphs shall be punishable. Assets also include in particular legally relevant papers and documents in any form (including electronic and digital) substantiating the right to such assets or rights pertaining to such assets. Indirect intent is sufficient for commission of the act as is the intent to use the provided or collected means only partially for the incriminated purpose.

In addition, article 107 paragraph 5 and article 124 of the Liechtenstein Law on Persons and Companies (Personen- und Gesellschaftsrecht, PGR) already apply: Article 107 paragraph 5 PGR states that associations of persons (and therefore also charitable organizations) whose objects are immoral or unlawful may not, by virtue of the law, acquire the right of legal personality. Article 124 specifies the applicable procedure.

4. **Subparagraph 1.4.:**

"In the context of sub-paragraph 2 (a) of the Resolution, could Liechtenstein please explain how it criminalises the recruitment of members of terrorist groups both inside as well as outside Liechtenstein as distinct from the criminalisation of association with such a group?"

§§ 15 and 12 StGB as well as the planned introduction of §§ 278b and 278c StGB in the framework of the anti-terrorism package are relevant in this respect (Annex):

§ 278b newly introduces the criminal offense of terrorist group: mere participation as a member of a terrorist group will be punishable. A person is considered to participate as a member if, inter alia, he or she participates in the activities of the

group "by supplying information or otherwise with knowledge of the fact that such participation will contribute to the group or its criminal activities" (cf. the definition of participation in § 278a paragraph 2, to which § 278b paragraph 2 refers). Whoever recruits other persons for terrorist purposes is therefore punishable according to § 278b paragraph 2 (as indicated also in the Government's explanation of the legislative proposal).

Furthermore, proposed § 278c StGB is relevant in this context, which increases the penalty applicable to certain general offenses (murder, bodily injury, etc.) by half, if they have been committed as acts of terrorism. Acts of recruitment connected to a concretely planned "terrorist offense" may under certain circumstances be punishable as abetting: abettors are considered as perpetrators in accordance with § 12 StGB.

A person recruited may be considered punishable for attempted participation in the terrorist organization (§ 15 in connection with § 278a StGB), even when the person has not actually participated in the terrorist group (and therefore the preconditions of § 278a StGB have not been met). Insofar as recruitment for the purpose of a concretely planned offense occurs, the recruited person may under certain circumstances also be prosecuted for attempting other punishable acts (e.g., murder as a terrorist offense, § 75 in connection with § 278c StGB).

The penal provisions mentioned here are also applicable to offenses committed abroad according to the planned amendment to § 64 paragraph 1 StGB (please cf. the legislative text in the Annex for details).

5. **Subparagraph 1.5.:**

"Please outline the existing or proposed legal provisions that, in addition to the recommended amendment of § 64 of the Criminal Code, criminalise the use of Liechtenstein territory for the purpose of financing, planning, facilitating or committing terrorist acts against other states or their citizens. Effective implementation of sub-paragraphs 2(d) and (e) of the Resolution requires that such provisions should be incorporated in the penal law of Liechtenstein."

The anti-terrorism package includes the following legal amendments, which will be debated in Parliament in April. The purpose of the anti-terrorism package is the implementation of the UN Convention for the Suppression of the Financing of Terrorism and of UN Security Council resolution 1373 (2001). In addition, it takes into account the EU Council Framework Decision of 13 June 2002 on Combating Terrorism (Official Journal of the European Communities, L. 164, page 3, 22 June 2002).

The following new offenses shall be introduced in the Criminal Code (Strafgesetzbuch, StGB):

- § 278 b: Terrorist group (see para. 4 of the present report)
- § 278 d: Financing of terrorism (see para. 3)
- § 278 c: "Collective classification of terrorist offenses" (see para. 4)

Supporting these measures, terrorist groups will be taken into account in the forfeiture of unlawful enrichment (§ 20), and terrorist groups and financing of terrorism will be taken into account in the forfeiture of assets (§ 20b, 20c).

In addition, the list of predicate crimes for money laundering will be expanded to include the new § 278d (Financing of terrorism).

The amendment of § 64 has already been mentioned in the question. This amendment concerns the extension of domestic jurisdiction to terrorist groups and financing of terrorism.

6. **Subparagraph 1.6.:**

"Sub-paragraph 3 (d) of the Resolution requires all States to become parties as soon as possible to all the relevant international convention and protocols relating to terrorism. The CTC would appreciate receiving information on the progress made by Liechtenstein in becoming a party to the following conventions and protocols:

- the Convention on the Marking of Plastic Explosives for the Purpose of Detection,
- the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation,
- the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf,
- the International Convention for the Suppression of Terrorist Bombings and
- the International Convention for the Suppression of the Financing of Terrorism."

Since 26 November 2002, Liechtenstein has been a State Party to 11 of the 12 international conventions on combating terrorism. In 2002, Liechtenstein ratified four of these instruments (Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation of 10 March 1988, Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf of 10 March 1988, Convention on the Marking of Plastic Explosives for the Purpose of Detection of 1 March 1991, International Convention for the Suppression of Terrorist Bombings of 15 December 1997).

In view of the ratification of the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999, the necessary legislative amendments have been prepared in the framework of the anti-terrorism package. The Convention is intended to be submitted for ratification in conjunction with the legislative proposal.

7. **Subparagraph 1.7.:**

"Please provide the CTC with a copy of the amendments to the Penal Code and other relevant laws and regulations of Liechtenstein on anti-terrorism, once enacted. In this context, the CTC would be interested to know when these amendments are expected to enter into force."

The anti-terrorism package and the ratification of the Convention for the Suppression of the Financing of Terrorism will be discussed in the April 2003 session of Parliament. Liechtenstein will submit all relevant legal amendments to the CTC (the drafts for the session of Parliament are annexed to this report).

8. Efforts to provide technical assistance to other countries and organization

Soon after the adoption of resolution 1373, Liechtenstein offered the assistance of a financial expert. This offer has not yet been accepted, but Liechtenstein's offer stands. In light of the importance of this topic, Liechtenstein has also been active in this and related areas in other bodies:

The Director of the Financial Intelligence Unit (FIU) of Liechtenstein is a member of the bureau of the Moneyval group of the Council of Europe, which deals with issues of money laundering and financing of terrorism. In the framework of Moneyval, monitoring activities are undertaken and technical assistance is provided where needed.

In the framework of the Egmont Group (association of Financial Intelligence Units, currently 69 members), the Liechtenstein FIU maintains regular contact with FIUs worldwide, in particular for the purpose of exchanging information. As a member of the Outreach working group, Liechtenstein has also sponsored the acceptance of the FIUs of other countries as new members. The Egmont Group has named the Director and the Deputy Director of the Liechtenstein FIU as experts for the programs of the International Monetary Fund concerning money laundering and the suppression of the financing of terrorism.

10 February 2003